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UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 GEORGE WILLIAMS,

15 Defendant.
16

CR 03-0084-VAP

GOVERNMENT'S OPPOSITION TO
DEFENDANT'S APPLICATION FOR
COMPASSIONATE RELEASE;
MEMORANADUM OF POINTS AND
AUTHORITIES IN OPPOSITION.

17 The government, by and through an attorney of record,
18 Assistant United States Attorney Timothy J. Searight, hereby files
19 opposition to defendant George Williams's motion for compassionate
20 release. The government's opposition is based on the attached
21 memorandum of points and authorities and the files and records of

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1 this case, some of which are being contemporaneously filed in an
2 excerpt of record.

3
4 Respectfully submitted,

5 TRACY L. WILKISON
6 Acting United States Attorney

7 SCOTT M. GARRINGER
8 Assistant United States Attorney
9 Chief, Criminal Division

10 Dated: June 22, 2021

11 /s/
12 _____
13 TIMOTHY J. SEARIGHT
14 Assistant United States Attorney

15 Attorneys for Plaintiff
16 UNITED STATES OF AMERICA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 On July 8, 2004, defendant was arrested and arraigned on a First
5 Superseding Indictment. (CR 488.) Defendant was named only in Count
6 One of the indictment. Count One charged defendant, and several
7 others, with conspiracy to manufacture, possess with intent to
8 distribute, and distribute phencyclidine ("PCP"), in violation of
9 Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A).
10 (Id.)

11 On July 7, 2005, the government filed an information alleging
12 that defendant had previously been convicted of two felony drug
13 crimes. (CR 928.) Specifically, the government alleged that, on May
14 14, 1985, defendant was convicted of possession of PCP for sale, in
15 violation of California Health and Safety ("H&S") Code Section
16 11378.5, and that on October 24, 2000 defendant was convicted of
17 manufacturing PCP in violation of California H&S Section 11379.6.
18 (ER 4-5.)¹

19 **A. Trial Proceedings**

20 On July 12, 2005, defendant proceeded to jury trial with co-
21 defendants, including Reed. (CR 954.)

23 ¹ "ER" refers to the government Excerpt of Record filed
24 concurrently with this document, and is followed by the page number.
25 The Pre-Sentence Report ("PSR") is referenced extensively in this
26 document and can be found at page 16 of the ER. The government has
27 not filed the PSR underseal because it was previously filed by
28 defendant on the record in defendant's direct appeal. The PSR
citations are followed by the paragraph number within the PSR. "RT"
refers to the Reporter's Transcript of Proceedings that were
previously filed with the Court and is followed by the date of the
transcript and the page number.

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2 At trial, agents and officers from a Los Angeles task force
3 testified that in the fall of 2002, they began investigating PCP
4 manufacturing and distribution activities of Reed and his associates.
5 (RT 7/15/05 125.) On March 21, 2003, in an isolated area near
6 Adelanto, California, agents located a PCP manufacturing site,
7 recovered four pounds of PCP, and chemicals and equipment used in the
8 manufacture of PCP. (RT 7/15/05 28, 32-34, 93-97.) Based in part on
9 the facts of the Adelanto seizure, agents then obtained a series of
10 orders to conduct wiretap interception of telephones being used by
11 Reed and his associates. They began intercepting telephones on April
12 4, 2003, and continued through early June 2003. (RT 7/15/05 107-13.)
13 The wiretap intercepts led to the stop of a van traveling on
14 interstate 15 north of San Bernardino that contained 26.1 kilograms
15 of PCP in crystalline form, and found chemicals and equipment capable
16 of producing approximately 175 kilograms of PCP. (RT 7/22/05 51-61,
17 103-05.) A few weeks after the seizure on Interstate 15, in May
18 2003, intercepted calls led to the seizure of five gallons of liquid
19 PCP and the remnants of PCP manufacturing operation at a property in
20 Palmdale, California. (RT 7/22/05 7-13).

21 From Reed's telephones, defendant was intercepted. The calls
22 suggested that defendant was a distributor of quantities of PCP made
23 by Reed, and that he advised Reed on eluding law enforcement.
24 Shortly after the Interstate 15 seizure, defendant was intercepted
25 discussing whether an informant's information or law enforcement
26 surveillance had resulted in the seizure. Defendant advised Reed to
27 be wary of surveillance at locations where chemicals could be picked-
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1 up. (RT 7/21/05 50-55; PSR ¶ 83.) At trial, a co-defendant, Kim
2 Stinson, who had previously pled guilty, testified for the
3 government. Stinson testified that he had also been a part of Reed's
4 PCP distribution group. (RT 7/19/05 57-59.) There was a wiretap
5 intercept call played for the jury in which defendant told Stinson
6 that defendant had out-of-State customers who wished to purchase PCP.
7 (PSR ¶ 69.) Stinson testified that he personally delivered gallon or
8 half-gallon quantities of PCP from Reed to defendant on a few
9 occasions. (Id.) He testified that he recalled one incident in
10 which he watched Reed pour a gallon of PCP into an apple juice
11 container and gave it to defendant. (Id.) After the seizure of the
12 PCP in Palmdale, and the remnants of PCP manufacturing, defendant and
13 Reed discussed law enforcement surveillance, and defendant expressed
14 concern that he would be arrested. (PSR ¶ 103.)

15 In the course of trial, defendant moved to dismiss the
16 indictment and charges against based on a witness' failure to
17 preserve handwritten notes. (CR 978.) The motion was denied. (CR
18 981.)

19 At the conclusion of the government's case, defendant and co-
20 defendants moved to dismiss the case, arguing insufficiency of the
21 evidence. (CR 984.) The motion was denied. (Id.)

22 On July 28, 2005, defendant was convicted on the conspiracy
23 charge in Count One of the indictment. The jury made a specific
24 finding that the amount of PCP for which defendant was criminally
25 responsible as a part of the conspiracy was 175 kilograms. (RT
26 7/28/05 10-15; PSR ¶ 109.)

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1 **B. Defendant's Criminal History**

2 In preparation for sentencing, a Pre-Sentence Report was
3 prepared. Defendant was born on February 29, 1964.

4 On May 4, 1985, when defendant was 21-years-old, defendant was
5 convicted of violations of California Health and Safety ("H&S") Code
6 Sections 11351 (possession of cocaine for sale) and 11378.5
7 (possession for sale of PCP). (PSR ¶ 130.) The PSR stated that
8 officers searched defendant's bedroom and recovered "16 grams of
9 cocaine in various packages and 34.7 grams of liquid PCP." (PSR
10 ¶ 131.) Defendant was sentenced to 3 years in prison. He was
11 paroled in October 1986, and discharged from parole in October 1987.
12 (Id.)

13 On April 6, 1991, defendant was convicted of voluntary
14 manslaughter, a violation of California Penal Code Section 192A.
15 (PSR ¶ 132.) The killing occurred on March 7, 1990, when defendant
16 was 26-years-old. (Id.) The PSR has summarized the facts as
17 follows:

18 Williams "crept" toward the victim from the rear of a
19 car where the victim was sitting, and fired five shots at
20 him. The victim died at the scene after being struck in
the head, abdomen, torso and left arm.

21 (PSR ¶ 133.) Defendant was sentenced to six years in prison. (PSR
22 ¶ 132.) Defendant first paroled in September 1993, when he was 29-
23 years-old. On April 12, 1995, defendant was convicted of misdemeanor
24 driving with .08 or greater blood alcohol level. (PSR ¶ 134.) On
25 September 14, 1995, defendant was found inside a vehicle with both a
26 loaded .45 caliber and loaded 9 mm handguns in the car. (PSR ¶ 149.)
27 Likely as a result of one or both of these matters, defendant's
28

1 parole was violated and he was returned to prison on September 27,
2 1995. (PSR ¶¶ 132, 134.) Defendant paroled from prison a second
3 time in 1996, and was discharged from parole in October 1997, when he
4 was 32-years-old. (PSR 132.)

5 On February 2, 2000, defendant was arrested for manufacturing
6 PCP, a violation of California H&S Code § 11379.6. (PSR ¶ 135.) The
7 PSR states that officers searched the residence of an associate and
8 found chemicals used to manufacture PCP. (PSR ¶ 136.) The resident
9 said defendant stored the chemicals there. Officers then searched
10 defendant's residence and his bedroom within the residence. (Id.)

11 The PSR states,

12 Deputies searched the master bedroom and found, among
13 other things, a Glock 9mm semiautomatic along with four
14 loaded clips, a package of 150 sandwich bags, and a triple
beam scale, which was inside the closet. Chemicals used to
manufacture PCP were also found in the garage.

15 (Id.) As a result of the seizure, defendant was convicted of PCP
16 manufacture on October 24, 2000, when defendant was 36-years-old.
17 Defendant received a sentence of 365 days in county jail with seven
18 years in State prison suspended, and a three-year period of
19 probation. (PSR ¶ 135.)

20 As stated above, the facts of this federal case involving PCP
21 manufacture and distribution arose in 2002 and the first part of
22 2003, when defendant was in his late 30s, and when he was on State
23 probation for PCP manufacturing. (PSR ¶ 138.)

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1 Defendant argued that a minor role should be applied, but made no
2 mention of defendant's career offender status. (Id.) Defendant
3 argued for a sentence of 240 months in prison. (Id.)

4 In the government's sentencing position, the government went
5 through in detail how a decision was made to pursue a life in prison
6 sentence for defendant. (CR 1170; ER 67.) The government stated
7 that it had conducted "proffer" sessions with more than ten co-
8 defendants in the case and inquired as to who in the group was "the
9 most dangerous, violent and sophisticated." (Id.) The government
10 stated, "In addition to co-defendant Rodrick Reed, many of the
11 persons interviewed identified defendant as possessing those
12 characteristics to an unusual degree." The government also discussed
13 defendant with Detective Labbe of the Los Angeles County Sheriff's
14 Department and Detective Lowes with the San Bernardino County
15 Sheriff's Department. The Detectives knew defendant for many years.
16 The government stated that the Detectives believed defendant "was
17 both highly dangerous and sophisticated." (ER 67-68.) The
18 government stated that it examined defendant's criminal history, and
19 the facts of his conviction for voluntary manslaughter in which he
20 "crept" up and killed a person, and that defendant was twice arrested
21 in possession of firearms. (RT 68.) On the facts of conviction, the
22 government argued that defendant acted as a mentor to Reed and that
23 he was sophisticated in PCP activities and in attempting to elude law
24 enforcement detection. (Id.) The sentencing position concluded,
25 "The government believes that the decision to pursue the life
26 sentence was appropriate given the facts of the case and defendant's
27 background." (ER 69.)

1 The sentencing hearing was conducted on January 17, 2006. (CR
2 1193.) The Court stated the mandatory minimum in the case and that,
3 pursuant to the Guidelines, defendant was a career offender. (ER
4 73.) In January 2006, the Court imposed sentence in light of the
5 Supreme Court's decision in Booker v. Washington, 543 U.S. 220
6 (2005). Accordingly, the Guidelines were viewed as advisory in
7 nature, and the Court framed its comments within the factors of 18
8 U.S.C. § 3553(a). (ER 74.) The Court stated, "[I]t's a rare crime
9 that, of course, should merit a life sentence. However, that is what
10 is mandated by the law here and it appears to the Court that it is
11 merited." (ER 77.) Evaluating the § 3553(a) factors, and as to the
12 nature and circumstances of the offense, the Court noted that it was
13 "a widespread and very dangerous and serious conspiracy." (Id.) The
14 Court stated, "I include Mr. Williams as one of those higher up and
15 more responsible and certainly Mr. Reed." (ER 75.) As to
16 defendant's role in the offense, the Court stated, "And I think the
17 Government is correct that Mr. Reed viewed him as a mentor and turned
18 to him for advice." (ER 76.) As to deterrence, the Court said that
19 it did not know what would deter defendant and stated, "I think it
20 was a murder conviction after which the defendant still has firearms,
21 is still found in possession of firearms after his release from
22 prison after that." (ER 77.) The Court said, "There are previous
23 convictions, previous drug convictions, which was not deterrence, and
24 the time served on that was not deterrence to getting involved in

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1 this conspiracy." (Id.) The Court also expressed its view of the
2 § 3553(a) factors in relation to the mandatory minimum:

3 It's not necessary to go through the 3553(a) factors
4 probably in light of the fact that there's a mandatory
5 minimum, but in light of the graveness or the gravity, I
6 suppose, I do so in the alternative to rely on the
7 mandatory minimum.

8 (ER 12.) The Court sentenced defendant to life in prison. Defendant
9 has been in prison in this case since July 8, 2004. (CR 488.)

10 **D. Prison Conduct**

11 Defendant is currently in custody at the United States Prison in
12 Victorville, California. Prison records indicate that, in 2009 he
13 was found to have "unused balloons" in his locker. (ER 87.) In 2012
14 he was disciplined for fighting with another inmate. (Id.) In 2014
15 he was found to have alcohol in his cell. (Id.)

16 Defendant is currently 57-years-old.

17 **II.**

18 **ARGUMENT**

19 The First Step Act does not apply retroactively to allow
20 elimination of mandatory minimum sentences that were imposed prior to
21 the adoption of the First Step Act. It is uncontested that, when
22 defendant was sentenced in 2006, in conjunction with the crime of
23 conviction, the two alleged and admitted prior drug convictions
24 created a mandatory minimum sentence of life in prison. That
25 mandatory minimum sentence remains today notwithstanding the changes
26 brought by the First Step Act.

27 On the merits, apart from the mandatory minimum, this Court
28 indicated in 2006 that it believed a life sentence was appropriate
for defendant. In addition, both the First Step Act and the 18

1 U.S.C. § 3553(a) factor require a court to examine, when considering
2 re-sentencing the danger to the community that would be posed by a
3 defendant's release or shortened sentence. In this case, defendant
4 was convicted of voluntary manslaughter when he "crept" up on the
5 victim and shot him five times in the head and torso. Although the
6 killing occurred when defendant was in his mid-20s, shortly after
7 being released from prison he was found with a loaded Glock handgun
8 with multiple magazines in his bedroom and PCP manufacturing
9 equipment in his garage. After being released from prison still
10 later, he sold large quantities of PCP with co-defendant Reed and
11 counseled him on how to avoid law enforcement surveillance. In
12 prison, defendant has been disciplined for fighting with an inmate
13 and possession of alcohol. There is nothing to suggest that the
14 Court's decision in 2006 was in error, or any clear evidence that
15 defendant has reformed.

16 Defendant previously argued that his trial counsel was
17 ineffective in a 28 U.S.C. § 2255 motion that was denied by this
18 Court. Competence of counsel issues are not relevant to a motion for
19 compassionate release.

20 Defendant's motion should be denied.

21
22 **A. The First Step Act Does Not Apply Retroactively To Amend
Previously Imposed Mandatory Minimum Sentences**

23 The First Step Act does not apply to defendant. Defendant was
24 sentenced, and his sentence became final, long before the adoption of
25 the FSA. While it is certainly true that mandatory minimums have
26 been changed in drug cases by the FSA, and if sentenced today on the
27 same facts a lower mandatory minimum would apply, there is nothing in

1 the FSA indicating that the new mandatory minimums are to be given
2 retroactive effect, or have no effect, in pre-FSA cases. The FSA
3 applies retroactively to pre-enactment offenses only "if a sentence
4 for the offense ha[d] not been imposed" as of the date of the Act's
5 enactment, December 21, 2018. First Step Act of 2018, Pub. L. 115-
6 391, 132 Stat. 5222, § 403(b).

7 Accordingly, in United States v. Voris, 964 F.3d 864 (9th Cir.
8 2020), the Ninth Circuit held that the First Step Act did not apply
9 where the Act's alteration to the mandatory-minimum stacking
10 provision of 18 U.S.C. § 924(c) would have reduced his mandatory
11 sentence from 110 years to 50 years. Id. at 868, 873. See also,
12 United States v. Tones, --- F.3d ---, 2021 WL 868555 (6th Cir.
13 2021)(shorter mandatory minimum of 15 years in drug case not
14 retroactive to defendant sentenced before adoption of FSA).

15 More broadly, granting defendant's request would dismantle the
16 mandatory sentencing scheme Congress enacted in 18 U.S.C. § 841(b)(1)
17 and in place today but with different minimums or, perhaps, have the
18 practical effect of eliminating mandatory minimums. Defendant's
19 approach would potentially permit sentencing courts to impose
20 mandatory minimums, as dictated by Congress, and then, after the
21 judgment became final, eliminate mandatory sentences by simply
22 declaring "extraordinary and compelling" circumstances. Although the
23 Ninth Circuit has not decided whether "the imposition of a mandatory
24 minimum sentence . . . deprive[s] the court of the authority to later
25 grant compassionate relief," a court has suggested that such
26 authority may be unavailable. United States v. Arrona, No. 17-CR-
27 142-JFW, Docket No. 163 at 4-5 n.3 (C.D. Cal. Jun. 26, 2020) (quoting

1 United States v. Varnado, No. 14-CR-283-LAB, 2020 WL 2512204, at *1
 2 n.1 (S.D. Cal. May 15, 2020)).

3 Apart from the potential consequences of defendant's suggestion
 4 going forward, the FSA cannot be interpreted to permit the
 5 retroactive elimination of mandatory minimums in pre-FSA cases such
 6 as defendant's.

7
 8 **B. Defendant Has Not Shown He Is Entitled to Relief Under the
 First Step Act**

9 As a result of the First Step Act ("FSA"), 18 U.S.C.
 10 § 3582(c)(1)(A) states that "the court . . . upon motion of the
 11 defendant . . . may reduce the term of imprisonment . . . after
 12 considering the factors in section 3553(a) to the extent they are
 13 applicable, if it finds that extraordinary and compelling reasons
 14 warrant such a reduction." At a later point, the section states that
 15 the reduction be "consistent with applicable policy statements issued
 16 by the Sentencing Commission."

17 The FSA, at 28 U.S.C. §§ 994(a) and 994(t), directed the
 18 Sentencing Commission to promulgate and adopt policy statements
 19 defining the meaning of "extraordinary and compelling reasons" for
 20 reduction. As noted by the Ninth Circuit in United States v. Aruda,
 21 993 F.3d 797 (2021), the Sentencing Commission has not yet adopted
 22 such a policy statement.² Section 994(t), however, states,

23
 24 ² Prior to the FSA, in Guidelines § 1B1.13, the Commission has
 25 defined what circumstances are "extraordinary and compelling" for
 26 purposes of compassionate release. Specifically, application note 1
 27 of this Guideline provides an exhaustive list of "extraordinary and
 compelling" reasons for release: (1) a debilitating or terminal
 medical condition; (2) a serious deterioration in health due to
 aging; (3) responsibility as the sole remaining caregiver to a minor

1 "Rehabilitation of the defendant alone shall not be considered an
 2 extraordinary and compelling reason." The defendant seeking release
 3 under § 3581(c)(1) bears the burden to establish the statutory
 4 requirements. See United States v. Ortiz, No. 18-CR-2063-BAS, 2020
 5 WL 5500229, at *1 (S.D. Cal. Sept. 11, 2020); United States v.
 6 Rogers, No. 16-CR-72-DAD, 2020 WL 5440352, at *3 (E.D. Cal. Sept. 10,
 7 2020); United States v. McGrue, No. 08-CR-1318-ODW-1, 2020 WL
 8 4042777, at *1 (C.D. Cal. Jul. 10, 2020).

9 A defendant's motion must satisfy three requirements. First,
 10 the defendant has to establish "extraordinary and compelling reasons"
 11 for his release. 18 U.S.C. § 3582(c)(1)(A)(i). Second, the
 12 defendant must establish that he "is not a danger to the safety of
 13 any other person or to the community." 18 U.S.C. § 3582(c)(1)(A);
 14 see also United States v. Clews, 2020 WL 3529870 (June 30,
 15 2020)(affirming denial of compassionate release motion because the
 16 district court reasonably concluded that the defendant was a danger
 17 to the community); United States v. Arceneaux, (same). And, third,
 18 the defendant has to establish that his release would be consistent
 19 with "the factors set forth in section 3553(a)." 18 U.S.C.
 20 § 3582(c)(1)(A); see also United States v. Thrift, 834 F. App'x 411
 21 (affirming denial of relief because the district court reasonably
 22 concluded that compassionate release would be inconsistent with the
 23 § 3553(a) factors); United States v. Mortensen, 2020 WL 2549970
 24 (same). Only if the defendant satisfies all three requirements can

26 child, spouse, or partner; and (4) other reasons as determined by the
 27 BOP.² U.S.S.G. § 1B1.13, cmt. n.1(A)-(D).

1 he obtain relief. What defendant argues is that his sentencing today
2 would not have been the same as it was in 2005, that his attorney
3 should have negotiated a better outcome for him, that his sentence is
4 more than other defendants in the case, and that he has
5 rehabilitated.³

6 As to defendant's argument that, as a result of the FSA, his
7 sentence would be different today than it was in 2005, it is unclear
8 that is the case. This Court indicated that it believed a life
9 sentence was appropriate even apart from the mandatory minimum. The
10 Court stated, "[I]t's a rare crime that, of course, should merit a
11 life sentence. However, that is what is mandated by the law here and
12 it appears to the Court that it is merited." (ER 77.) Certainly the
13 Court, and the government, were aware that the sentence would endure
14 through the years and would be a primary marker in defendant's life.

15 The government's reasons for opposing something different than a
16 life sentence are not different today than they were in 2005.
17 Whether viewed under the "danger to the safety of the community"
18 language of § 3582(c) or as a § 3553(a) factor, the government's
19 primary concerns are for defendant's recidivism and violence. While
20 in his mid-20s, defendant committed an execution-style killing. He
21 came up behind a person and shot the person five times in the head
22 and torso. After serving a lengthy prison sentence, defendant's
23 parole was violated, and post-prison, he was found with a gun, and
24 returned to prison. That is, after serving this lengthy term in

25 ³ Although of no relevance to this motion, the FSA added
26 serious violent felony" prior convictions to § 841(b)(1) as crimes
27 which may be used to enhancement drug convictions. Possibly,
28 defendant's prior voluntary manslaughter would be the type of crime
that could now be used as a prior enhancement.

1 prison he had a loaded Glock handgun, four clips and packaging
2 materials in his bedroom and PCP chemicals in his garage. (PSR
3 ¶ 135-36.) Perhaps most importantly, after all of this, and being
4 released from prison again, defendant chose to associate with co-
5 defendant Rodrick Reed in this case, who was himself engaged in
6 large volume PCP manufacturing and kept high-powered guns and firearm
7 silencers. What defendant seems to have learned from his multiple
8 convictions and prison experiences was to try to avoid law
9 enforcement detection while still committing crimes, and to pass that
10 knowledge and experience on to others. The government is certainly
11 sensitive to the fact that defendant's voluntary manslaughter
12 conviction occurred many years ago, when defendant was in his 20s,
13 but what defendant chose to do again and again after that conviction
14 -- and after being released to society -- is the strongest indicator
15 of danger to the community. Defendant's crimes did not end with the
16 voluntary manslaughter conviction. He continued, on into his
17 thirties, with unfortunate associates and the same dangerous, and
18 callous, behavior. There are insufficient facts to say with
19 resolution that things have changed.

20 In support of "extraordinary and compelling" reasons for
21 release, defendant does not argue failing health or circumstances
22 beyond those attendant to serving the prison sentence. Defendant
23 argues that he has undergone a "dramatic rehabilitation" and that his
24 "steadfast commitment to self-improvement during his years of
25 incarceration is remarkable and weighs in favor of reducing his
26 sentence to time-served." (Def. Mot., pp. 13, 20.) In prison,
27 defendant relates that he has made efforts to remain a presence in
28

1 the life of his family and children, that he has completed vocational
2 programs and maintained employment in the UNICOR unit, and furthered
3 his formal education. (Def. Mot., pp. 13-15, 20-22.) He has
4 presented to the Court the outlines of a re-entry plan. (Def. Mot.,
5 pp. 24-25.)

6 The government does not have any way of independently examining
7 defendant's commitment to his family. His prison records, however,
8 indicate that he has been disciplined for fighting with an inmate,
9 and for having alcohol in his cell. Within the confines of a prison,
10 these facts are not dissimilar from what defendant manifested in the
11 past. They do not suggest steadfast adherence to the law.

12 Defendant argues that, apart from Reed, he received the longest
13 sentence than "nearly all" of the co-defendants in the case. (Def.
14 Mot., p. 23.) While that is certainly correct, the exception is the
15 life-sentence imposed for co-defendant Reed, and defendant's own
16 exceptionally serious criminal history and recidivism. At
17 sentencing, this Court specifically noted defendant's criminal
18 history in comparing him to co-defendants and stated, "I think the
19 Government is correct that Mr. Reed viewed [defendant] as a mentor
20 and turned to him for advice." (ER 76.) The Court viewed defendant
21 "as one of those higher up in the conspiracy." (ER 75.) The
22 sentence was different from others because defendant's background and
23 crimes were more serious.

24 Defendant dedicates a considerable portion of his brief to an
25 argument that he should be granted compassionate release and a
26 reduced sentence because, he says, his trial counsel was ineffective.
27 (Def. Mot., pp. 1, 3-4, 10-12.) Defendant has attached declarations

1 with regard to the performance and background of trial counsel.
2 Nowhere in his brief, however, has defendant cited any authority that
3 ineffective assistance of counsel at trial and sentencing is a basis
4 for granting compassionate release. Defendant previously filed a 28
5 U.S.C. § 2255 motion challenging the efficacy of his counsel on
6 several bases. (CR 1581.) The government's response included a
7 declaration from trial counsel in which counsel stated, "I spoke with
8 defendant about the possibility of accepting a plea agreement in
9 which he would receive a sentence of less than life in prison. I had
10 discussions with defendant about the facts and circumstances in the
11 case, possible defenses, and the potential sentence in the case.
12 Defendant elected to proceed to trial." (CR 1601, p. 27.) Defendant
13 filed a lengthy reply document to the government's § 2255 opposition
14 continuing to challenge the competence of counsel. (CR 1604.) In
15 the end, this Court denied defendant's motion. (CR 1648.) At trial,
16 counsel did file a motion to dismiss the indictment. (CR 978.)
17 After presentation of the government's case, counsel moved to dismiss
18 the charge on the basis of insufficiency of the evidence. These
19 motions were also denied. (CR 981, 984.)

20 The words "compassionate release" and "extraordinary and
21 compelling" are not legal terms into which unbounded arguments may be
22 poured. The issue of competence of counsel has no relevance to this
23 motion.

24 **III.**

25 **CONCLUSION**

26 Defendant's motion for re-sentencing and compassionate release
27 should be denied.